

Minnesota Sentencing Guidelines Commission

Controlled Substance Modifications to the Sentencing Guidelines Resulting from 2016 Minnesota Session Laws, [chapter 160](#) Creating or Amending Crime Laws Presented to MSGC on June 8, 2016

2016 Minn. Session Laws, Chapter 160, revises Minnesota's drug sentencing laws and directs certain changes to the drug-sentencing revisions proposed by the Commission in its January 15, 2016, *Report to the Legislature*.

Commission Action: The Commission must execute the Guidelines changes mandated by the act. In addition, the Commission should determine whether to make other Guidelines changes related to crimes created or amended by the act.

Description of Amendments Resulting from the Act:

The following Guidelines changes are **mandated** by the act:

- Adopt the proposed Drug Offender Grid, with modifications
- Eliminate proposed Severity Level (SL) D7
- Renumber proposed severity levels D10, D9, and D8 as severity levels D9, D8, and D7, respectively.
- Change the presumptive disposition for new SL D7 from executed to stayed at criminal history scores of 0 and 1.
- Rank aggravated first-degree controlled substance crime at new SL D9.
- Rank first-degree possession of a controlled substance at new SL D8 (with sale).
- Rank second-degree controlled substance crime at new SL D7.
- Make conforming changes to the Guidelines.

The act makes the following changes to drug crimes that **may have implications** for possible Guidelines modifications, all of which are contained in this report's staff-recommended changes unless noted otherwise:

- A list of "aggravating factors" is created. The list has some similarities to, and some differences from, the Guidelines list of circumstances that establish that an offense was a "major controlled substance offense." A side-by-side comparison of the lists is included in the materials for the Commission's reference. Consistent with other controlled substance offenses involving children and vulnerable adults, staff is recommending that aggravated controlled substance crime in the first degree, sale to a minor or vulnerable adult, is added to the list of offenses eligible for permissive consecutive sentences in Guidelines section 6.
- Aggravated controlled substance crime in the first degree is created. The crime involves an amount of controlled substance above the ordinary first-degree

threshold (100 grams or 500 dosage units), plus the use or possession of a firearm or the presence of two aggravating factors.

- A mandatory-minimum sentence is established for the aggravated first-degree offense, with no waiver provision. The offender must receive the Guidelines disposition (always an executed prison sentence) and duration at new SL D9, with no use of the lower part of the range. A number of the staff's recommended changes, below, are intended to accommodate this novel policy of excluding a portion of the range in this manner.
- A mandatory minimum sentence is established for first-degree offenses where the aggravated amounts are involved, but the offense is not otherwise an aggravated first-degree offense. The offender must receive the Guidelines disposition (always an executed prison sentence) and duration at new SL D8—again, with no use of the lower part of the range. The waiver provision applies only in possession cases.
- A disposition under Minn. Stat. § 152.18 no longer qualifies a subsequent offense as a “subsequent controlled substance conviction.” If the Commission believes that this change warrants a change in the Guidelines of giving a custody status point to an offender under a § 152.18 disposition (unlike other stays of adjudication), it should adopt the changes highlighted in **green** in this document. Staff recommends that the green-highlighted changes be considered separately from the other staff-recommended changes.
- The mandatory-minimum penalty for subsequent controlled substance convictions is limited significantly in other ways as well. The new mandatory-minimum provision applies to first- and second-degree offenses, and only prior first- and second-degree offenses qualify a subsequent first- or second-degree offense as a “subsequent controlled substance offense conviction.”
- Minn. Stat. § 609.11, subd. 5a, is amended. The law previously provided that § 609.11 (weapons-related) mandatory-minimum penalties must be added to chapter 152 mandatory-minimum penalties for subsequent controlled substance convictions. The new law specifies that § 609.11 mandatory-minimum penalties must also be added to the mandatory-minimum penalties for aggravated first-degree controlled substance crime, but only if the crime is aggravated because of two aggravating factors, rather than because of a firearm.

The following provisions of the act are **not seen as having implications** for possible Guidelines changes:

- Cocaine and methamphetamine weight thresholds are increased for first- and second-degree controlled substance crime, and third-degree possession offenses. Some or all of those threshold increases are rolled back if the offense involves a firearm or multiple aggravating factors.
- Marijuana weight thresholds are reduced for first- and second-degree offenses, and the marijuana plant is introduced as a new measure of quantity and severity.
- For offenders with no prior Minn. Stat. chapter 152 convictions, fifth-degree possession of certain small amounts of a controlled substance becomes of a gross misdemeanor.

- Eligibility for disposition under Minn. Stat. § 152.18 is expanded to third-degree possession offenses.
- Disposition under Minn. Stat. § 152.18 becomes mandatory for eligible fifth-degree possession cases with no prior felony record and no prior convictions for gross misdemeanor fifth-degree possession.
- The mandatory-minimum provisions of § 609.11 may not be waived for first- or second-degree sale while using or possessing, on the person or within the immediate reach of the defendant or an accomplice, a firearm.
- The DOC's conditional release program is expanded.
- MSGC is required to track the impact of the act and other changes to drug laws.
- A community justice reinvestment account is created.

The following drug-related Guidelines modifications, contained in Appendix 2.2.A. of the Commission's 2016 *Report to the Legislature*, **were not altered by the act** and will take effect August 1, 2016. Those modifications are not repeated in this document:

- Terminological changes related to the use of the new term "Drug Offender Grid" throughout the Guidelines.
- Changes in section 2.D.3 regarding factors that may be used as reasons for departure.

Staff Recommendations: Staff recommends that the Commission adopt all of the following changes except those highlighted in **green**. Staff recommends that adoption of the green-highlighted provisions be debated, if at all, in a separate motion.

Section 1.B. Definitions

As used in these Sentencing Guidelines (or "Guidelines"), the following terms have the meanings given.

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13. Presumptive Sentence. * * *

- Presumptive Disposition. * * *
- Presumptive Duration. The "presumptive duration" is the recommended fixed sentence length in months found in the appropriate cell on the applicable Grid.
- Presumptive Range. The "presumptive range" is provided for a sentence that is a presumptive commitment. Pursuant to Minn. Stat. § 244.09, subd. 5(2), the range is 15 percent lower and 20 percent higher than the fixed duration displayed in each cell on the Grids.
- Lower Range. The "lower range" is that portion of the presumptive range that is shorter than the fixed presumptive duration.

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17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Drug offenses are arranged on the Drug Offender Grid into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

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Section 2.B. Criminal History

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1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing. * * *
- a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, <u>D1 – D2</u>	½
	3 – 5, <u>D3 – D5</u>	1
	6 – 8, <u>D6 – D7</u>	1 ½
	9 – 11, <u>D8 – D9</u>	2
	Murder 1 st Degree	2
	A	2
	B – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

- b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, <u>D1 – D2</u>	½
	3 – 5, <u>D3 – D5</u>	1
	6 – 8, <u>D6 – D7</u>	1 ½
	9 – 11, <u>D8 – D9</u>	2
	Murder 1 st Degree	2
	A	3
	B – C	2
	D – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

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2. Custody Status at the Time of the Offense.

- a. One Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1) through (3) are met:
- (1) The offender was under one of the following custody statuses:
- (i) probation;
 - (ii) parole;
 - (iii) supervised release;
 - (iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);
 - (v) release pending sentencing;
 - (vi) confinement in a jail, workhouse, or prison pending or after sentencing; or

(vii) escape from confinement following an executed sentence.

(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction. **This includes a guilty plea for an offense under Minn. Stat. § 152.18, subd. 1.**

(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:

- (i) a felony;
- (ii) extended jurisdiction juvenile (EJJ) conviction;
- (iii) non-traffic gross misdemeanor;
- (iv) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or
- (v) targeted misdemeanor. * * *

*Comment * * **

~~2.B.203.~~ Probation given for an offense under Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status.

~~2.B.204~~ ~~2.B.203~~ [Renumber ~~2.B.204~~ through ~~2.B.211~~ as ~~2.B.203~~ through ~~2.B.210~~.]

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Section 2.C. Presumptive Sentence

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1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). * * *

Each cell on the Grids provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence except as provided in section 2.C.3.c(1). The shaded areas of the grids do not display ranges. If the duration for a sentence that is a

presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum. * * *

3. Finding the Presumptive Sentence for Certain Offenses.

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c. Controlled Substance Offenses.

(1) Certain First-Degree Offenses. If the current conviction is for controlled substance crime in the first degree and the penalty statute is Minn. Stat. § 152.021, subd. 3(c) (related to sale or possession of at least 100 grams or 500 dosage units of certain controlled substances), or if the current conviction is for aggravated controlled substance crime in the first degree, then the lower range, although displayed on the Drug Offender Grid, is excluded from what would otherwise be the presumptive range for that offense.

(2) Subsequent Controlled Substance Convictions. If the current conviction offense is for a controlled substance crime in the first, or second, or third degree and is a "subsequent controlled substance conviction" as defined in Minn. Stat. § 152.01, subd. 16a, the presumptive disposition is commitment. ~~A stay of adjudication under Minn. Stat. § 152.18 that occurred before August 1, 1999 is not a prior disposition under Minn. Stat. § 152.01, subd. 16a. The prior dispositions listed in Minn. Stat. § 152.01, subd. 16a, trigger~~ Such a conviction triggers the presumptive commitment unless more than ten years have elapsed since discharge from sentence or stay of adjudication. The presumptive duration for a controlled substance conviction falling under this section is the ~~fixed~~ duration indicated in the appropriate cell on the Drug Offender Grid, or the mandatory minimum, whichever is longer. * * *

Comment * * *

2.C.10. ~~*Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered. Minn. Stat. § 152.021, subdivisions 3(c) and 3(d), exclude the lower range, as defined in section 1.B.13.d, from what would otherwise*~~

be the presumptive range. While the mandatory-minimum provision of subd. 3(c) may be waived for an offender sentenced for a first-degree possession crime who had not previously been convicted of controlled substance crime in the first, second, or third degree, a sentence duration that is shorter than the fixed presumptive sentence, even if within the lower range, is nevertheless a mitigated durational departure if subd. 3(c) applies. Under either subdivision, the presumptive disposition is commitment.

2.C.11. The special penalty provisions for subsequent controlled substance convictions do not apply to current offenses of aggravated controlled substance crime in the first degree.

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Section 2.E. Mandatory Sentences

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2. Specific Statutory Provisions. * * *

- c. Subsequent Drug Controlled Substance Offenses Involving a Dangerous Weapon. Pursuant to Minn. Stat. § 609.11, subd. 5a, some drug offenses committed with a dangerous weapon may be subject to one of the following two provisions.

- (1) Certain Aggravated First-Degree Offenses. If an offender is sentenced for aggravated controlled substance crime in the first degree under Minn. Stat. § 152.021, subd. 2b(2), and is also subject to Minn. Stat. § 609.11, subd. 5a, the presumptive duration is the mandatory minimum sentence described in section 2.C.3.c(1) added to the mandatory minimum sentence for the dangerous weapon involvement found in Minn. Stat. § 609.11, subd. 4 or 5.
- (2) Subsequent Controlled Substance Offenses. If an offender is sentenced for a ~~second or~~ subsequent ~~drug~~ controlled substance offense and is subject to Minn. Stat. § 609.11, subd. 5a, the presumptive duration is the longer of either:
 - (1) ~~(i)~~ the mandatory minimum sentence for the subsequent ~~drug~~ controlled substance offense added to the mandatory minimum sentence for the dangerous weapon involvement; or
 - (2) ~~(ii)~~ the presumptive duration for the subsequent ~~drug~~ controlled substance offense provided in the appropriate cell on the Standard Grid and limited, if applicable, by section 2.C.3.c(1).

* * *

2.E.05. Minn. Stat. § 609.11, subd. 5a, applies to aggravated controlled substance crime in the first degree only if the offender is convicted under Minn. Stat. § 152.021, subd. 2b(2), and the crime was committed with a firearm or other dangerous weapon. Example: An offender with a Criminal History Score of 3 possessed 100 grams of cocaine. Because two of the aggravating factors listed in Minn. Stat. § 152.01, subd. 24, were present, the offender is convicted of aggravated controlled substance crime in the first degree under Minn. Stat. § 152.021, subd. 2b(2). It is also proven that the offender was in possession of a firearm, although the firearm possession was not an element of the crime. The mandatory minimum sentence would be 158 months, calculated as follows:

122 months Mand. Min. (section 2.C.3.c(1); Severity Level D9, Criminal History Score of 3)
+ 36 months Mand. Min. for weapon (Minn. Stat. § 609.11, subd. 5(a))
=158 months

On the other hand, Minn. Stat. § 609.11, subd. 5a, does not apply to Minn. Stat. § 152.021, subd. 2b(1), which, by definition, involves the use or possession of a firearm.

2.E.05 2.E.06. Minn. Stat. § 609.11, subd. 5a, states that for a subsequent ~~drug~~ controlled substance offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the Standard Drug Offender Grid for the subsequent ~~drug~~ controlled substance offense; the presumptive duration is the longer of the two. For example: A ~~third~~ second-degree drug offender with a Criminal History Score of ~~3~~ 2 is convicted of a subsequent controlled substance offense and was in possession of a firearm.

Mandatory Minimums: 24~~36~~ months Mand. Min. (Minn. Stat. § 152.02~~32~~, subd. 3(b))
+ 36 months Mand. Min (Minn. Stat. § 609.11, subd. 5(a))
=60~~72~~ months

vs.

Grid Cell: =39~~68~~ months (Severity Level ~~6D7~~; Criminal History Score of 3 2)

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Section 4.C. Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6 or more</u>
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	D9	86 <i>74*-103</i>	98 <i>84*-117</i>	110 <i>94*-132</i>	122 <i>104*-146</i>	134 <i>114*-160</i>	146 <i>125*-175</i>	158 <i>135*-189</i>
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 <i>56*-78</i>	75 <i>64*-90</i>	85 <i>73*-102</i>	95 <i>81*-114</i>	105 <i>90*-126</i>	115 <i>98*-138</i>	125 <i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	D6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	D4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	D2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	D1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Effective August 1, 2016

Section 5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

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Severity Level	Offense Title	Statute Number
9	Controlled Substance Crime 1st Degree	152.021
9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)
9	Importing Controlled Substances Across State Borders	152.0261
8	Controlled Substance Crime 2nd Degree	152.022
6	Controlled Substance Crime 3rd Degree	152.023
6	Failure to Affix Stamp on Cocaine	297D.09, subd. 1
6	Failure to Affix Stamp on Hallucinogens or PCP	297D.09, subd. 1
6	Failure to Affix Stamp on Heroin	297D.09, subd. 1
6	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	297D.09, subd. 1
5	Possession of Substances with Intent to Manufacture Methamphetamine	152.0262
-4	Controlled Substance Crime 4th Degree	152.024
3	Anhydrous Ammonia (Tamper/Theft/Transport)	152.136
3	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
2	Controlled Substance in the 5th Degree	152.025
2	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
2	Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4

2	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	297D.09, subd. 1
1	Failure to Affix Stamp on Schedule IV Substances	297D.09, subd. 1
1	Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
1	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	152.33, subd. 2
1	Sale of Simulated Controlled Substance	152.097

<u>Severity Level</u>	<u>Offense Title</u>	<u>Statute Number</u>
<u>D9</u>	<u>Aggravated Controlled Substance Crime 1st Degree</u>	<u>152.021, subd. 2b</u>
	<u>Importing Controlled Substances Across State Borders</u>	<u>152.0261</u>
	<u>Manufacture Any Amount of Methamphetamine</u>	<u>152.021, subd. 2a(a)</u>
<u>D8</u>	<u>Controlled Substance Crime 1st Degree</u>	<u>152.021, subd. 1 or 2</u>
<u>D7</u>	<u>Controlled Substance Crime 2nd Degree</u>	<u>152.022</u>
<u>D6</u>	<u>Controlled Substance Crime 3rd Degree</u>	<u>152.023</u>
	<u>Failure to Affix Stamp on Cocaine</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Hallucinogens or PCP</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Heroin</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Remaining Schedule I & II Narcotics</u>	<u>297D.09, subd. 1</u>
<u>D5</u>	<u>Possession of Substances with Intent to Manufacture Methamphetamine</u>	<u>152.0262</u>
<u>D4</u>	<u>Controlled Substance Crime 4th Degree</u>	<u>152.024</u>
<u>D3</u>	<u>Anhydrous Ammonia (Tamper/Theft/Transport)</u>	<u>152.136</u>
	<u>Methamphetamine Crimes Involving Children and Vulnerable Adults</u>	<u>152.137</u>
<u>D2</u>	<u>Controlled Substance Crime 5th Degree</u>	<u>152.025, subd. 3(b)</u>
	<u>Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>152.33, subd. 4</u>

<u>Severity Level</u>	<u>Offense Title</u>	<u>Statute Number</u>
	<u>Sale of Synthetic Cannabinoids</u>	<u>152.027, subd. 6(c)</u>
<u>D1</u>	<u>Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Schedule IV Substances</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>152.33, subd. 1</u>
	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>152.33, subd. 2</u>
	<u>Sale of Simulated Controlled Substance</u>	<u>152.097</u>

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5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

<u>Statute Number</u>	<u>Offense Title</u>	<u>Severity Level</u>
<u>152.021, subd. 1 or 2</u>	Controlled Substance Crime 1st Degree	<u>9D8</u>
<u>152.021, subd. 2a(a)</u>	Manufacture Any Amount of Methamphetamine	<u>D9</u>
<u>152.021, subd. 2b</u>	<u>Aggravated Controlled Substance Crime 1st Degree</u>	<u>D9</u>
<u>152.022</u>	Controlled Substance Crime 2nd Degree	<u>8D7</u>
<u>152.023</u>	Controlled Substance Crime 3rd Degree	<u>D6*</u>
<u>152.024</u>	Controlled Substance Crime 4th Degree	<u>D4</u>
<u>152.025, subd. 3(b)</u>	Controlled Substance Crime 5th Degree	<u>D2</u>
<u>152.0261</u>	Importing Controlled Substances Across State Borders	<u>D9</u>
<u>152.0262</u>	Possession of Substances with Intent to Manufacture Methamphetamine	<u>D5</u>

* See section 2.C and Appendix 1 to determine the presumptive disposition.

Statute Number	Offense Title	Severity Level
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	<u>D</u> 2
152.097	Sale of Simulated Controlled Substance	<u>D</u> 1
152.136	Anhydrous Ammonia (Tamper/Theft/Transport)	<u>D</u> 3
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	<u>D</u> 3
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	<u>D</u> 1
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	<u>D</u> 1
152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	<u>D</u> 2
297D.09, subd. 1	Failure to Affix Stamp on Cocaine	<u>D</u> 6
297D.09, subd. 1	Failure to Affix Stamp on Hallucinogens or PCP	<u>D</u> 6
297D.09, subd. 1	Failure to Affix Stamp on Heroin	<u>D</u> 6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	<u>D</u> 6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	<u>D</u> 2
297D.09, subd. 1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	<u>D</u> 1
297D.09, subd. 1	Failure to Affix Stamp on Schedule IV Substances	<u>D</u> 1

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

- B.** Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

Statute Number	Offense Title
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine
<u>152.021, subd. 2b(2) with ref. to 152.01, subd. 24(8)</u>	<u>Aggravated Controlled Substance Crime 1st Degree, Sale to a Minor or Vulnerable Adult</u>
152.022, subd. 1 (5) (6)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023, subd. 1(3)	Sells Sch. I,II,III to Minor (not Narcotic)
152.023, subd. 1(4)	Sells Sch. I,II,III Employs Minor (not Narcotic)
152.024, subd. 1(2)	Schedule IV or V to Minor
152.024, subd. 1(3)	Employs Minor to Sell Schedule IV or V
152.0261, subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults

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Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

- Presumptive disposition. Commitment.
- Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.
- Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See section 2.G for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

Statute	Offense	Prerequisite or Conditions	Minimum Duration
152.021	Controlled Substance Crime 1st Degree	Prior felony conviction per chapter <u>under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense.</u>	48 Months

Statute	Offense	Prerequisite or Conditions	Minimum Duration
		finding under Minn. Stat. § 152.18	
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction per chapter under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense. finding under Minn. Stat. § 152.18	36 Months
152.023, subd. 3(a)	Controlled Substance Crime 3rd Degree	Prior felony conviction under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18	Grid Time*
152.023, subd. 3(b)	Controlled Substance Crime 3rd Degree	Prior felony conviction under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18	24 months

* ~~Presumptive commitment per Guidelines section 2.C.~~

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